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December 19, 2014

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**Re: Cricelli, Inc.  
FRN 0024063562  
Rural Broadband Experiment Application  
WC Docket No. 10-90  
REQUEST FOR CONFIDENTIAL TREATMENT PURSUANT  
TO SECTION 0.459 OF THE COMMISSION'S RULES AND  
REQUEST FOR WAIVER**

Dear Ms. Dortch:

On behalf of Cricelli, Inc. ("Cricelli"), attached hereto is Cricelli's Request for Waiver ("Waiver Request") of certain financial qualification requirements described in the Commission's *Report and Order* implementing the Rural Broadband Experiment program.<sup>1</sup> The Waiver Request is submitted in accordance with the procedures explained in the Commission's *Public Notice* provisionally selecting Cricelli's application for rural broadband experiment funding to provide fixed broadband services to designated census blocks in California.<sup>2</sup> The Waiver Request with the referenced exhibits also is being submitted electronically as an attachment to Cricelli's Form 5620, which undersigned counsel and Cricelli understand will be confidential.

The exhibits to the Waiver Request contain sensitive financial and proprietary business information that should be protected from public disclosure. Pursuant to Section 0.459 of the Commission's Rules, Cricelli hereby requests confidential treatment of the exhibits to the Waiver Request (the "Information"). This Information includes Cricelli's tax returns and annual

<sup>1</sup> See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) ("*Report and Order*").

<sup>2</sup> See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014) ("*Public Notice*").



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bank summaries. Such information is necessary for the Commission – but not the public – to review given that the Commission has proposed to make funding available to Cricelli and wants to ensure that it is financially qualified.

As required by Section 0.459(b), Cricelli provides the following information:

1. *Identification of the specific information for which confidential treatment is sought.* Cricelli requests that the exhibits to the Waiver Request be treated as confidential pursuant to Exemption 4 of FOIA<sup>3</sup> and Section 0.459, which protect confidential commercial and other information not routinely available for public inspection. The Information includes tax returns and bank summaries. This is competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from Cricelli's competitors. If the Information were disclosed, other parties could use it to determine information relative to Cricelli's business plans, competitive operations, operations and performance.
2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission.* The Information for which confidentiality is requested concerns the rural broadband experiment proceeding, the requirements for which were adopted in the *Report and Order*. The *Public Notice* specifically contemplates that documents used to support a waiver request may be subject to confidential treatment.
3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Information contains tax returns and bank summaries. It is competitively sensitive, business confidential and proprietary commercial information that would not routinely be made available to the public and has been carefully guarded from other parties.
4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The Information includes information about Cricelli's operations. If the Information is not protected, competitors and would-be competitors could be able to use the Information to their competitive advantage.
5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Because the Information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules acknowledge that release of the Information to the public is likely to produce competitive harm. Cricelli's competitors could assess aspects of Cricelli's financial condition to undermine Cricelli's deployment objectives and competitive position.

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<sup>3</sup> See 5 U.S.C. § 552(b)(4).





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6. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure.* Cricelli's maintains strict security concerning its financial information. Only Cricelli and persons directly authorized by it have access to the data required to produce the Information.

7. *Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The information is not available to the public and has not previously been disclosed to third parties.

8. *Justification of the period during which the submitting party asserts that material should not be available for public disclosure.* Cricelli requests that the Information be treated as confidential indefinitely because it is not possible at this time to determine any date certain by which the Information could be disclosed without risk of competitive harm to Cricelli.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* If publicly disclosed, the Information would be extremely harmful to Cricelli's plans to deploy fixed broadband service using funds made available by the Commission.

Please contact undersigned counsel to Cricelli if there are any questions concerning this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Stephen E. Coran', with a long horizontal flourish extending to the right.

Stephen E. Coran

Enclosure

**Cricelli, Inc. , Inc.**  
**Rural Broadband Experiment Application**  
**Request for Waiver of Financial Requirements**

Cricelli, Inc. hereby seeks a waiver of the requirement that winning bidders for Rural Broadband Experiment funds provide audited financial statements for the past three years. In lieu of the audited financial statements required by the *Report and Order* to be submitted by December 19, 2014,<sup>1</sup> Cricelli, Inc. is submitting 3 years tax returns and bank statements. Accordingly, the Commission should find that Cricelli, Inc. is financially qualified and approve its request for waiver.

***Background***

By *Public Notice* dated December 5, 2014, the Wireline Competition Bureau (“Bureau”) provisionally selected Cricelli, Inc.’s application for Category One rural broadband experiment funding.<sup>2</sup> Subject to submission of additional information and a final determination of Cricelli, Inc.’s technical and financial qualifications, Cricelli, Inc. will receive funds for construction and operation of fixed broadband services to designated census blocks in California.

Cricelli, Inc. is an affiliate of Red Shift Internet Services (in business for over 20 years), which offers fixed broadband services to homes and businesses in the Monterey and Salinas areas of California, which are located adjacent to the project areas proposed in Cricelli, Inc.’s rural broadband experiment application. Cricelli, Inc.’s management is experienced in constructing, deploying, marketing, and operating fixed broadband services. Going forward, and upon Commission approval, Cricelli, Inc. plans to conduct rural broadband experiment operations through the entity, Red Shift Internet Services.

***Financial Qualifications***

In the *Report and Order* adopting requirements for the rural broadband experiment program, the Commission stated that winning bidders must “provide the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow...”<sup>3</sup> In FAQs posted on the Commission’s web site, the Bureau stated that:

[i]f a winning bidder is unable to produce three consecutive years of financial statements, it should file a waiver of this requirement after it has been named as a winning bidder. An entity should submit with its waiver petition evidence that demonstrates it is financially qualified. We then determine on a case-by-case basis

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<sup>1</sup> *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (“*Report and Order*”).

<sup>2</sup> See *Public Notice*, DA 14-1772 (rel. Dec. 5, 2014) (“*Public Notice*”).

<sup>3</sup> *Report and Order* at 8786-87 (¶ 54). See also *Public Notice* at 2.

whether it can assess the entity's financial qualifications using the alternative evidence provided.<sup>4</sup>

At this time, Cricelli, Inc. has included in its submission 3 years of financial statements, however they are not formally audited. Accordingly, Cricelli, Inc. is providing alternative evidence to justify its solid financial foundation and long-standing position in the community. Red Shift and Cricelli, Inc. have been successfully providing Internet services in the Monterey County for over 20 years, 19 of which they were selected as best ISP by Monterey County residents. The following is also provided in support of this request.

The documentation intended to show that Cricelli, Inc. is a legitimate applicant, and one that takes seriously the financial requirements is attached hereto are (1) Cricelli, Inc.'s federal income tax returns for the previous three years (Exhibit 1 hereto), and (2) annual bank statement summaries for the past three years (Exhibit 2 hereto). This documentation has been provided to Cricelli, Inc.'s accounting firm, to assist in the preparation of audited financial statements.

Without question, the public interest supports waiver of the requirement that Cricelli, Inc. provide audited financial statements. This requirement is intended to be an indicator that the winning bidder will be able to obtain the LOC commitment by the deadline of February 3, 2015. Given the significant steps that Cricelli, Inc. has taken thus far, it would contravene the public interest in expediting the provision of voice and broadband to underserved locations in the designated census blocks if the Commission were to find Cricelli, Inc. financially unqualified at this time. To the contrary, expeditiously granting the waiver request will facilitate Cricelli, Inc.'s ability to move forward with his plans to obtain the LOC commitment by the deadline of February 3, 2015.

Finally, grant of the requested waiver would be consistent with prior holdings. For example, in *Armstrong Telephone Co.* Commission staff reinstated and granted an application that did not strictly comply with Commission rules requiring cellular applicants to include a firm financial commitment in their applications.<sup>5</sup> In upholding a Bureau decision, the Commission noted that "[t]he Bureau weighed the public interest concern of expeditiously providing service to the public against strict application of its rule and concluded it was in the public interest to grant the application."<sup>6</sup> Recently, the Commission granted a waiver of its former defaulter rule to encourage "broad, robust participation in Auction 97, while continuing to ensure that auction bidders are financially reliable."<sup>7</sup> The Commission also waived its attributable material relationship rules in light of "broader policy objectives" that included the participation of small entities in competitive bidding.<sup>8</sup> These examples demonstrate that policy objectives, such as the expeditious provision of service and increased participation by small businesses can override

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<sup>4</sup> Rural Broadband Experiments – Frequently Asked Questions (FAQs), *available at* [http://transition.fcc.gov/wcb/FAQs\\_Rural\\_Broadband\\_Experiments.pdf](http://transition.fcc.gov/wcb/FAQs_Rural_Broadband_Experiments.pdf) (last visited Dec. 11., 2014).

<sup>5</sup> See *Armstrong Telephone Co.*, 3 FCC Rcd 1665 (1988).

<sup>6</sup> *Id.* at 1666.

<sup>7</sup> See *Petition of DIRECTV Group, Inc. and EchoStar LLC for Expedited rulemaking to Amend Section 1.2105(a)(2)(xi) and 1.2106(a) of the Commission's Rules and/or for Interim Conditional Waiver*, FCC 14-130 (rel. Aug. 29, 2014), at ¶ 21.

<sup>8</sup> See *Grain Management, LLC's Request for Clarification or Waiver of Section 1.2110(b)(3)(iv)(A) of the Commission's Rules*, FCC 14-103 (rel. July 23, 2014), at ¶ 14.

restrictive requirements related to an applicant's financial qualifications. The Commission should apply these same principles here in considering and granting this Waiver Request.

Based on the foregoing, Cricelli, Inc. respectfully submits that it has justified a waiver to provide audited financial statements.